3967

BILL NO. S-78-02-04

SPECIAL ORDINANCE NO. S-27-78

AN ORDINANCE authorizing the sale and execution of a deed to General Telephone Company of Indiana, Inc., of certain real estate owned by the City of Fort Wayne, Indiana.

WHEREAS, the City of Fort Wayne, Indiana, is the owner of certain real estate in Fort Wayne, Indiana, described as follows, to-wit:

A part of the East half (1/2) of the Southwest Quarter (1/4) of Section 11, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Section 11; thence South 89 degrees 37 minutes 35 seconds East (assumed direction bearing), a distance of 1312.89 feet to a point that is midway between the said Southwest corner of Section 11 and the South quarter (1/4) corner of Section 11, said point being the point of beginning of this described tract of land; thence North 00 degrees 10 minutes 01 seconds West, a distance of 2650.75 feet to the East-West Centerline of said Section 11, said point being the mid-point between the West quarter (1/4) corner and the Center point of said Section 11; thence South 89 degrees 42 minutes 23 seconds East on the East-West Centerline, a distance of 1243.15 feet to the Westerly line of an existing 100 feet wide railroad right-of-way line, said point being North 89 degrees 42 minutes 23 seconds West-63.57 feet from the aforesaid center of Section 11; thence South 00 degrees 21 minutes 17 seconds West on aforementioned Westerly right-of-way line of railroad, a distance of 2652.37 feet to the South line of the Southwest quarter (1/4) of daid Section 11, said point being North 89 degrees 37 minutes 35 seconds West-93.88 feet from the South quarter (1/4) corner of said Section 11; thence North 89 degrees 37 minutes 35 seconds West on the South line of said Southwest quarter (1/4) section, a distance of 1219.01 feet to the place of beginning; containing 74.94 acres more or less.

SUBJECT TO the Tall Structures Act of 1957, and the South 50 feet thereon for rights-of-ways for the Cook Road, and any other legal drainage easement and/or grant thereon.

WHEREAS, said real estate is located immediately North of Smith Field, but is separated from Smith Field by a highway known as Cook Road; and

WHEREAS, The Board of Aviation Commissioners has determined that said real estate is not needed by the City of Fort Wayne and on January 17, 1978, at a regularly called meeting of said Board, said Board authorized the sale of said described real estate to General Telephone Company of Indiana, Inc., for

APPROVED AS TO FORM AND LEGALITY,

CITY ATTORNEY

the sum of $352,218.00, subject to a determination that said amount was not less than the appraised value thereof and subject also to the approval of said sale by the Common Council of the City of Fort Wayne, Indiana; and

WHEREAS, the appraised value of said described real estate is less than $352,218.00, and it is in the best interest of the City of Fort Wayne, Indiana, to sell said described real estate for said sum of $352,218.00; and

WHEREAS, a contract for said sale has been entered into by the Board of Aviation Commissioners of the City of Fort Wayne and General Telephone Company of Indiana, Inc., for such sale to General Telephone Company of Indiana, Inc.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the sale by the City of Fort Wayne, Indiana, of the above described real estate for not less than $352,218.00 to General Telephone Company of Indiana, Inc., be and hereby is authorized and approved.

SECTION 2. That the Mayor of the City of Fort Wayne be, and he hereby is, authorized and directed, in the name of and for and in behalf of the City of Fort Wayne to execute a Deed to General Telephone Company of Indiana, Inc., for the parcel of real estate herein above described upon payment by General Telephone Compnay of Indiana, Inc., of the sum of $352,218.00, such Deed to be in the form of a Warranty Deed and to be subject to the terms and conditions as shall be considered necessary or advisable in the best interests of the City of Fort Wayne. The signature of the Mayor on such instrument shall be attested by the City Clerk of the City of Fort Wayne and shall be accompanied by the seal of said City.

SECTION 3. The proceeds of such sale shall be deposited in the Aviation Fund of the City of Fort Wayne.

SECTION 4. This Ordinance shall be and constitute sufficient authority for the Mayor and the City Clerk of the City of Fort Wayne to execute such a Deed and to do all things inciden-

tal thereto or necessary therefor.

SECTION 5. This Ordinance shall be in full force and effect from and after its passage.

Vivian H. Schmidt
Councilman

Read the first time in full and on motion by C. Schmidt, seconded by Hunter, and duly adopted, read the second time by title and referred to the Committee on Finance (and ~~the City Plan Commission for recommendation~~) and Public Hearing to be held after due legal notice, ~~at the Council~~ Chambers, ~~City-County Building~~, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__ at _____ o'clock ____ M., E.S.T.

DATE: 2-14-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by C. Schmidt, seconded by D. Stier, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8	0		1	
BURNS	X				
HINGA				X	
HUNTER	X				
MOSES	X				
NUCKOLS	X				
SCHMIDT, D.	X				
SCHMIDT, V.	X				
STIER	X				
TALARICO	X				

DATE: 2-28-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S-27-78 on the 28th day of February, 19 78

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 1st day of March, 19 78, at the hour of 11:30 o'clock A. M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 6th day of March, 19 78, at the hour of 9:00 o'clock A. M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-02-04

REPORT OF THE COMMITTEE ON FINANCE

We, your Committee on Finance to whom was referred an Ordinance authorizing the sale and execution of a deed to General Telephone Company of Indiana, Inc., of certain real estate owned by the City of Fort Wayne, Indiana

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance do PASS.

WILLIAM T. HINGA - CHAIRMAN

VIVIAN G. SCHMIDT - VICE CHAIRMAN Vivian G. Schmidt

JOHN NUCKOLS

PAUL M. BURNS

FREDRICK R. HUNTER

2-28-78
DATE

CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

CONTRACT OF PURCHASE OF REAL ESTATE

THIS AGREEMENT, made this 20th day of December, 1977, between THE FORT WAYNE BOARD OF AVIATION COMMISSIONERS, hereinafter called "Sellers," and GENERAL TELEPHONE COMPANY OF INDIANA, INC., an Indiana corporation having its principal office in Fort Wayne, Indiana, hereinafter called "Buyer," WITNESSETH:

1. Buyer hereby agrees to purchase and Sellers hereby agree to sell the following described real estate located in Allen County, Indiana:

A part of the East half (½) of the Southwest quarter (¼) of Section 11, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Section 11; thence South 89 degrees 37 minutes 35 seconds East (assumed direction bearing), a distance of 1312.89 feet to a point that is midway between the said Southwest corner of Section 11 and the South quarter (¼) corner of Section 11, said point being the point of beginning of this described tract of land; thence North 00 degrees 10 minutes 01 seconds West, a distance of 2650.75 feet to the East-West Centerline of said Section 11, said point being the mid-point between the West quarter (¼) corner and the Center point of said Section 11; thence South 89 degrees 42 minutes 23 seconds East on the East-West Centerline, a distance of 1243.15 feet to the Westerly line of an existing 100 feet wide railroad right-of-way line, said point being North 89 degrees 42 minutes 23 seconds West-63.57 feet from the aforesaid center of Section 11; thence South 00 degrees 21 minutes 17 seconds West on aforementioned Westerly right-of way line of railroad, a distance of 2652.37 feet to the South line of the Southwest quarter (¼) of said Section 11, said point being North 89 degrees 37 minutes 35 seconds West-93.88 feet from the South quarter (¼) corner of said Section 11; thence North 89 degrees 37 minutes 35 seconds West on the South line of said Southwest quarter (¼) section, a distance of 1219.01 feet to the place of beginning; containing 74.94 acres more or less.

SUBJECT TO the Tall Structures Act of 1957, and the South 50 feet thereon for rights-of-ways for the Cook Road, and any other legal drainage easement and/or grant thereon.

This contract shall be deemed to include the purchase of all

improvements, if any, upon said real estate and all appurtenances thereto. Said real estate, improvements and appurtenances (hereinafter called "property") shall be delivered in their present condition, ordinary wear and tear excepted, except as otherwise provided in paragraph 8. Sellers warrant that all of said improvements and all fixtures to the real estate have been fully paid for or will be fully paid for prior to the closing of this sale.

2. Buyer will pay Sellers the sum of Three Hundred Fifty Two Thousand Two Hundred Eighteen Dollars ($352,218) for said property upon the following terms and conditions: Thirty Seven Thousand Four Hundred Seventy Dollars ($37,470), as an earnest deposit, in the escrow account of Harding, Dahm & Company, Inc., the receipt of which is hereby acknowledged by Sellers upon the signing of this contract, and said purchase price shall be paid through Harding, Dahm & Company, Inc., to the Sellers at the time of closing under paragraph 9 below.

3. Sellers shall supply Buyer with a complete, properly prepared and certified abstract of title for its examination, which shall be certified by a competent abstracter to a date reasonably current with the date of closing of the purchase hereunder, and which shall show marketable title in fee simple absolute to said property to be vested in Sellers according to the Standards of Marketability of Abstract of Title as adopted by the Allen County Indiana Bar Association.

4. Buyer desires to purchase the above described property in order to use the same for the new Fort Wayne North Service and Supply Facility of Buyer which intended use requires a Contingent Use Permit. In the event a zoning change is required in order to permit Buyer's said intended use, Sellers agree to cooperate with Buyer in seeking said change. In the event said change cannot be obtained within ninety (90) days from date hereof, the aforesaid earnest deposit in the Harding Dahm Escrow Account shall be returned to the Buyer and this contract shall be deemed cancelled, null, void, and of no further force and effect and each party shall be relieved of any liability hereunder to the other party.

5. Buyer has obtained at its expense, an up-to-date survey of said property by a competent surveyor. Said survey shows to Buyer's

satisfaction the location of all improvements upon said property, including the distance thereof from boundary lines, the manner in which all corners are perpetuated, and that said property is free of all encroachments by or upon it. The surveyor has also properly staked all corners of said property in order to perpetuate the same if they were not already properly perpetuated. The surveyor's certificate includes the correct legal description of the property and states that his/her survey is a true and correct survey thereof.

6. Prior to execution of this agreement, Buyer and its agents and representatives entered upon the property from time to time at their convenience to make such soil test borings as Buyer desired and to make a survey of the property to establish grid elevation data. Buyer has determined, upon the basis of the information so acquired by it, that the soil and grid elevation data are satisfactory to it for its intended use.

7. Purchase of said property in accordance with the terms of this contract shall be closed within forty-five (45) days after Sellers' compliance with the provisions of paragraph 3 above and after a reasonable time for Buyer's examination of said abstract provided, however, that if Sellers do not comply with the terms of said paragraph 3 within ninety (90) days after the date of this contract, Buyer may, at its option exercisable one or more times, either grant Sellers additional time to comply with said paragraph or rescind this contract, by written notice to Sellers. If Buyer rescinds this contract, Sellers shall immediately repay to Buyer all payments made to Sellers or for Sellers' benefit under this contract, and thereupon this contract shall become null and void and of no further force or effect and each party shall be relieved of any and all liability hereunder to the other party.

8. Risk of loss of, or damage to, said property, whether by casualty, condemnation, or otherwise, is assumed by Sellers until the purchase is closed in accordance with the provisions of this contract. Thereafter, all such risk of loss or damage shall be upon Buyer. If all or a portion of said property is destroyed, damaged, condemned, or

rendered unfit for the use which Buyer desires to make of it prior to the closing, then at Buyer's option:

(a) Buyer shall have the right to rescind this contract, and the amount of all payments made to Sellers or for Sellers' benefit hereunder shall be forthwith paid to Buyer by Sellers and thereupon this contract shall become null and void and of no further force or effect and each party shall be relieved of any and all liability hereunder to the other party; or

(b) The amount of all insurance proceeds or condemnation awards received or to be received by Sellers because of said destruction, damage, or other event shall be applied in reduction of full payment of the purchase price provided for in this contract, the excess, if any, shall be paid to Buyer, and the parties shall proceed to complete the closing of this purchase with the terms of this contract.

9. At the closing the Buyer shall pay the purchase price through the Harding Dahm Escrow Account to the Sellers. Sellers shall convey said property to Buyer by a good and sufficient general Warranty Deed, free and clear of all restrictions, claims, easements, liens, encumbrances, and rights of occupancy or use, except as otherwise provided herein in paragraph 3 above and excepting the restrictions of the Tall Structures Act of 1957, the rights-of-way for the Cook Road and any legal drainage easement and/or grant thereon. Sellers shall also give Buyer a closing affidavit in form acceptable to Buyer and deliver said abstract to Buyer.

10. Possession of said real estate shall be surrendered to Buyer at the time of closing free of all rights of occupancy and use in anyone other than Buyer and free, in fact, of all occupancy and use by anyone other than Buyer.

11. If Buyer fails to complete the purchase of said property

in accordance with the terms and conditions of this contract, then Sellers may retain all payments made to Sellers hereunder as liquidated damages.

12. This contract shall be binding upon, and shall inure the benefit of, the respective heirs, legatees, devisees, legal representatives, successors, and assigns of Sellers and Buyer.

13. When any notice is required or permitted by this contract, it may be given either in person or by written notice, mailed by certified mail, postage prepaid, to the proper party at the address shown below or at such other address as may be designated by written notice hereunder.

14. This contract is also subject to the adoption of an ordinance by the Common Council of the City of Fort Wayne authorizing the sale provided herein. Sellers agree to promptly submit such an ordinance to said Council and Buyer agrees to cooperate in presenting such information to said Council as may be desired in connection with Council's consideration of such ordinance. In the event an ordinance authorizing the sale is not approved within a reasonable time, Sellers shall promptly return to Buyer the earnest deposit held in the Harding Dahm Escrow Account made by Buyer and this agreement shall be deemed cancelled, null, void, and of no further force and effect and each party shall be relieved of any liability hereunder to the other party.

Name	Address
SELLERS:	THE FORT WAYNE BOARD OF AVIATION COMMISSIONERS City/County Building Fort Wayne, Indiana 46802
BUYER:	GENERAL TELEPHONE COMPANY OF INDIANA, INC. 8001 U.S. 24 West P. O. Box 1201 Fort Wayne, Indiana 46801

IN WITNESS WHEREOF, Sellers have hereunto set their hands and

Buyer has caused its corporate name to be hereunto subscribed and its corporate seal hereunto affixed and attested by its duly authorized officers, all as of the date first above written.

SELLERS:

THE FORT WAYNE BOARD OF
AVIATION COMMISSIONERS

By: [signature]
(Title)
Kenneth W. Maffrie
Richard T. Wiemer

BUYER:

GENERAL TELEPHONE COMPANY OF INDIANA, INC.

By: [signature]
E. A. BUCHNER
Vice President

ATTEST:

[signature]
H. W. PURDY
Secretary

Harding, Dahm & Company, Inc., agent for the owner of the property described herein, acknowledges receipt of earnest money deposit in the sum of $37,500 made by General Telephone Company of Indiana, Inc., to be held in escrow according to the terms of the above Contract of Purchase of Real Estate.

Dated this 20th day of December, 1977.

HARDING, DAHM & COMPANY, INC.

BY: [signature]